

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case Number: 9:11-cv-80006

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
SONY DUCASSE,)
)
Defendant.)

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff, United States of America, brings suit against Defendant, Sony Ducasse, for a permanent injunction pursuant to Internal Revenue Code §§ 7402(a), 7407 and 7408.

1. This action has been requested by the Chief Counsel of the Internal Revenue Service (IRS), a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to the provisions of 26 U.S.C. (I.R.C.) §§ 7402, 7407 and 7408.

Jurisdiction and Venue

2. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and I.R.C. §§ 7402(a), 7407(a) and 7408(a).

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Ducasse resides in this judicial district and a substantial portion of the events giving rise to this action have occurred in this judicial district.

Defendant

4. Ducasse is a paid tax return preparer who resides in Greenacres, Florida.

5. Ducasse has an accounting degree from a university located in Haiti.

Summary of Ducasse's Activities

6. Since 2004, Ducasse has operated a sole proprietorship with the principal business of preparing federal and state income tax returns. During this time, Ducasse has utilized three names for this business, each assigned a different Employee Identification Number (EIN):

a. The business is currently known as KYSKEYA Tax Services (KTS) and is located at 386 SE 2nd Avenue in Delray Beach, Florida. Records from the Florida Department of State show that Ducasse owns KTS;

b. Ducasse owns a business known as KYSKEYA Store and Multi-Services (KMS) which currently has an expired registration with the Florida Department of State;

c. Ducasse owns a business known as KYSKEYA Financial Service (KFS) which has a registration with the Florida Department of State which expires on December 31, 2010.

7. Ducasse employs two individuals who also prepare tax returns for customers.

8. IRS records show that Ducasse prepared approximately 1,256 returns in 2007, 1,142 in 2008, 548 in 2009 and 332 in 2010.

9. In 2008, the IRS suspended the Electronic Filing Identification Number (EFIN) of KMS for two years. Ducasse is identified as the responsible officer on the EFIN application.

10. Ducasse has repeatedly and continually improperly claimed the Earned Income Tax Credit (EITC) on customers' returns, failed to comply with the due diligence requirements for determining eligibility and amount of these EITCs, and fabricated deductions on his customers' tax returns.

Results of Audits Conducted in 2007

11. In 2007, the IRS examined 100 federal income tax returns that Ducasse prepared in 2006 in which he claimed an EITC for a customer.

12. The EITC is a refundable credit which, in most cases, can entitle the taxpayer to a refund. Due to the methods used to calculate the EITC, individuals who claim qualifying children, as well as individuals with higher earned incomes, may be entitled to a larger credit.

13. Treasury Regulations obligate preparers to obtain certain information from taxpayers when claiming the EITC. Preparers must document compliance with these requirements and keep such documentation for three years. See 26 C.F.R. § 1.6695-2(b) (2010).

14. Ducasse did not comply with these due diligence requirements as to any of these 100 returns in violation of I.R.C. § 6695(g).

15. As a result of these 100 separate violations, the IRS imposed \$10,000 in penalties against the Ducasse personally pursuant to I.R.C. § 6695(g).

16. Ducasse consented to assessment of these penalties.

Results of Audits Conducted in 2009

17. In 2009, the IRS imposed \$22,000 in penalties against Ducasse for ten violations of I.R.C. § 6694(a) (understatement of taxpayer's liabilities by preparer due to unrealistic position) and ten violations of I.R.C. § 6694(b) (preparer's willful or reckless conduct). These penalties were imposed against Ducasse as the return preparer for three separate customers:

- a. The IRS imposed ten penalties, totaling \$9,000, against Ducasse for his preparation of Joann Powell's federal income tax returns for the 2003 through the 2007 tax years. All five of her returns, which were signed using Ducasse's Preparer Tax Identification Number (PTIN), claimed deductions for Unreimbursed Employee Business Expenses and Charitable Contributions which

were subsequently disallowed for each of the five years. Ms. Powell did not provide information that supported these deductions;

b. The IRS imposed six penalties, totaling \$7,000, against Ducasse for his preparation of Jonal Simon and Beatrice Dinvil's joint federal income tax returns for the 2005 through the 2007 tax years. All three of their returns, which were signed using Ducasse's PTIN, claimed an Education Credit as well as deductions for Unreimbursed Employee Business Expenses and Charitable Contributions which were subsequently disallowed for each of the three years. Ms. Dinvil did not provide information that supported these deductions;

c. The IRS imposed four penalties, totaling \$6,000, against Ducasse for his preparation of Omar Maati's federal income tax returns for the 2006 and 2007 tax years. Both of his returns, which were signed using Ducasse's PTIN, claimed deductions for Unreimbursed Employee Business Expenses and Charitable Contributions which were subsequently disallowed for each year. Mr. Maati did not provide information that supported these deductions.

Results of Audits and Investigations Conducted in 2010

18. Despite being twice penalized for improperly preparing returns, Ducasse continued to engage in penalty conduct.

19. In 2010, the IRS audited 45 returns which Ducasse prepared between the 2006 and 2009 tax years that included a claim for the EITC. The audits resulted with the credits being disallowed or reduced in 42 of those cases, yielding a disallowance and reduction rate of over 93%. These 42 returns included over \$149,000 in false claims for the EITC.

20. In August 2010, the IRS reviewed 10 returns that Ducasse prepared. All of these returns were signed using Ducasse's PTIN. The IRS also reviewed the associated files that Ducasse maintained as part of his return preparation. Of these ten returns and files:

- a. Ducasse failed to maintain copies of the EITC calculation worksheet for all ten customers in violation of 26 C.F.R. § 1.6695-2(b)(1)(ii);
- b. One of the files claimed two "nieces" as qualifying children for purposes of the EITC when, in fact, those two individuals were children of the taxpayer's

friend and thus were not qualifying children within the meaning of the EITC. See I.R.C. § 32(c)(3)(A);

c. Three of the returns claimed “other income” on line 21 which resulted in larger EITCs. However, Ducasse’s files did not contain any documentation supporting this income;

d. Four of the returns claimed gross receipts but no expenses on Schedule C which resulted in larger EITCs. However, Ducasse’s files did not contain any documentation supporting this income.

21. For the 2007 through the 2010 filing seasons, the IRS estimates the harm to the United States from Ducasse’s misconduct to be as high as \$6.3 million which is computed as follows: total EITC returns (1,715) X audit adjustment rate (93%) X average dollars per assessment (\$4,006).

Count I: Injunction under § 7407 for Conduct Subject to Penalty under §§ 6694 and 6695

22. The United States incorporates by reference the allegations contained in paragraphs 1 through 21.

23. I.R.C. § 7407 authorizes a district court to enjoin a tax return preparer from engaging in conduct subject to penalty under I.R.C. §§ 6694 and 6695 or from engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

24. If a preparer’s conduct is continual or repeated and the court finds that a narrower injunction would not be sufficient to prevent the preparer’s interference with the proper administration of the internal revenue laws, the court may enjoin the person from acting as a tax return preparer. See I.R.C. § 7407(b).

25. Ducasse, individually and through various entities, has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 by preparing returns that understate

his customers' tax liabilities based on unreasonable and reckless positions. See I.R.C. § 6694(a)-(b).

26. Ducasse, individually and through various entities, has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6695 by failing to be diligent in determining eligibility for the EITC. See I.R.C. § 6695(g). Even after the IRS imposed \$10,000 in penalties against Ducasse for this conduct, he continues to claim EITCs without exercising due diligence.

27. Ducasse's continual and repeated violations of I.R.C. §§ 6694 and 6695 fall within I.R.C. § 7407(b)(1)(A) and (D) and thus he is subject to injunction under I.R.C. § 7407.

28. Injunctive relief is necessary to prevent this misconduct because, absent an injunction, Ducasse is likely to continue preparing false federal income tax returns.

29. Ducasse should be permanently enjoined under I.R.C. § 7407 from acting as a tax return preparer because a more limited injunction would be insufficient to stop his continual and repeated interference with the proper administration of the internal revenue laws.

Count II: Injunction under § 7408 for Conduct Subject to Penalty under § 6701

30. The United States incorporates by reference the allegations contained in paragraphs 1 through 29.

31. I.R.C. § 7408 authorizes a district court to enjoin any person from engaging in conduct subject to penalty under I.R.C. § 6701, if injunctive relief is necessary to prevent a recurrence of the conduct.

32. I.R.C. § 6701(a) imposes penalties against anyone who assists, advises or procures the preparation of a document, knows or has reason to know that the document will be used in

connection with a material matter arising under the internal revenue laws, and knows that, if used, the document would result in an understatement of tax liability.

33. Ducasse has engaged in conduct subject to penalty under I.R.C. § 6701(a) because he prepares returns for customers that claim EITCs without verifying eligibility for those credits, claims bogus deductions for customers, and reports bogus income for customers.

34. Injunctive relief is necessary to prevent this misconduct because, absent an injunction, Ducasse is likely to continue preparing false federal income tax returns.

35. Ducasse should be permanently enjoined under I.R.C. § 7408 from engaging in conduct subject to penalty under I.R.C. § 6701 because a more limited injunction would be insufficient to stop his interference with the proper administration of the internal revenue laws.

Count III: Injunction under § 7402(a) for Unlawful Interference with
the Enforcement of the Internal Revenue Laws

36. The United States hereby incorporates by reference the allegations in paragraphs 1 through 35.

37. I.R.C. § 7402(a) authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

38. Ducasse, through the actions described paragraphs 6 through 21 above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

39. Unless enjoined, Ducasse is likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws.

40. Unless enjoined, the IRS will have to continue devoting substantial time and resources to identify Ducasse's customers and examine their returns. This may be impossible

given the IRS's scarce resources and will likely cause the United States to suffer irreparable injury by providing incorrect refunds to taxpayers.

41. The Court should order injunctive relief under I.R.C. § 7402(a).

WHEREFORE, the United States of America prays for the following:

A. That the Court find that Ducasse is a tax return preparer, has repeatedly and continually engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6695, and that a permanent injunction under § 7407 is appropriate to prevent the recurrence of that conduct;

B. That the Court find that Ducasse has repeatedly and continually engaged in conduct subject to penalty under I.R.C. § 6701, and that a permanent injunction under § 7408 is appropriate to prevent the recurrence of that conduct;

C. That the Court find that Ducasse has repeatedly and continually engaged in conduct that interferes with the enforcement of the internal revenue laws, and that a permanent injunction under I.R.C. § 7402(a) and pursuant to the Court's inherent equity powers is appropriate to prevent the recurrence of that conduct;

D. That the Court, pursuant to I.R.C. §§ 7402(a), 7407 and 7408, enter a permanent injunction prohibiting Ducasse, individually and doing business as any entity, and all those in active concert or participation with him, from:

(1) Preparing, assisting in the preparation of, or filing others' federal tax returns, amended returns, claims for refund or any other federal tax-related documents;

(2) Engaging in any activity subject to penalty under I.R.C. §§ 6694, 6701, or any other penalty provision of the Internal Revenue Code;

(3) Engaging in any activity subject to penalty under I.R.C. § 6695, including § 6695(g), which penalizes claiming an EITC without complying with the due diligence requirements imposed by Treasury regulations; and

(4) Engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws;

E. That the Court, pursuant to I.R.C. § 7402(a), enter an order requiring Ducasse to mail, within thirty days of the Court's judgment, a notice to all persons for whom he prepared federal tax returns, amended returns, refund claims or any other federal tax-related documents since January 1, 2006. This notice shall inform them that a permanent injunction has been entered against Ducasse and contain a copy of that injunction. Further, that the Court, pursuant to I.R.C. § 7402(a), enter an order that Ducasse file a certificate of compliance, signed under penalty of perjury and stating that he has complied with this paragraph E, with the Court within thirty days of the Court's judgment;

F. That the Court, pursuant to I.R.C. § 7402(a), enter an order requiring Ducasse to produce to counsel for the United States, within thirty days of the Court's judgment, a complete list of all persons identified in paragraph E, identifying each person's name, social security number, address, e-mail address, telephone number, and the tax period(s) for which Ducasse prepared a tax-related document for that person.

G. That the Court, pursuant to I.R.C. § 7402(a), enter an order requiring Ducasse to provide a copy of this permanent injunction within thirty days of the Court's judgment to all of Ducasse's principals, officers, managers, employees and independent contractors, and provide to counsel for the United States within thirty days of the Court's judgment a signed and dated acknowledgment of receipt for each person whom Ducasse provided such a copy;

H. That the Court order that the United States be permitted to engage in post-judgment discovery to monitor and ensure Ducasse's compliance with the terms of the permanent injunction entered against him;

- I. That the Court retain jurisdiction over Ducasse and over this action; and
- J. That the Court grant the United States such other relief, including costs, as is just and reasonable.

DATED: January 4, 2011.

Respectfully submitted,

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